

STATE OF MICHIGAN  
COURT OF APPEALS

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KELLY LYNN MOODY,

Plaintiff-Appellee,

v

PAUL RICHARD MOODY,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2005

No. 249870

Oakland Circuit Court

LC No. 97-543999-DM

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KELLY LYNN MOODY,

Plaintiff-Appellee,

v

PAUL RICHARD MOODY,

Defendant-Appellant.

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No. 250720

Oakland Circuit Court

LC No. 97-543999-DM

Before: Kelly, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order modifying child support and the trial court's order granting plaintiff's request for attorney fees. We affirm.

Defendant first argues that the trial court erred in modifying the child support order because the modification was improperly based, in part, on defendant's ability to pay. Modification of a child support order is within the sound discretion of the trial court. The burden is on the party appealing the child support order to demonstrate that a trial court clearly abused its discretion. "The trial court's findings of fact are reviewed for clear error, but its ultimate decision is subject to review de novo." *Kosch v Kosch*, 233 Mich App 346, 350; 592 NW2d 434 (1999). "Reversal of the trial court's decision is appropriate only if this Court is convinced that it would have reached a different result." *Id.*

Defendant argues that the trial court should have applied *Kalter v Kalter*, 155 Mich App 99; 399 NW2d 455 (1986) and, accordingly, only considered the amount actually needed to

maintain the children in a reasonable standard of living. We disagree. The trial court is required to apply the child support manual in determining the appropriate amount of child support. *Burba v Burba (After Remand)*, 461 Mich 637, 642-645; 610 NW2d 837 (2000); *Ghidotti v Barber*, 459 Mich 189, 200; 586 NW2d 883 (1998). The child support formula is based on a determination of the needs of the child *and* the actual resources of the parents. *Burba, supra* at 642-643. The formula also accounts for income disparity between the parents. *Id.* at 648. Accordingly, the trial court properly considered the needs of the children, the actual resources of the parents, and the parties' disparity in income.

Defendant also argues that the trial court erred in failing to use defendant's prior twelve months' income information to determine his income. The Michigan Child Support Formula of 2003 (2003 MCSF) section 2.01(C) instructs:

Where there is evidence of considerable variation in income due to seasonal employment, overtime, second jobs, bonuses, or profit sharing, etc., information from at least the preceding twelve months should be used in calculating net income. Certain occupations and self-employed persons may have considerable variation in income *from year to year*. The use of three years' income information is recommended where such variation exists. [Emphasis added.]

It is clear that the twelve-month method is recommended (the word "should" is operative) where, within any given year, income varies due to "seasonable employment, overtime, second jobs, bonuses, or profit sharing." Thus, while defendant's income varies due, in part, to bonuses, we conclude that the twelve-month method is not most suited to determining defendant's income, which varies considerably from year to year.

The three-year method applies where an occupation involves "considerable variations from year to year." Defendant argues that the three-year method only applies to the self-employed, but the provision clearly states "certain occupations and self-employed." Defendant wholesales investments to "wire houses." He is paid a salary of \$110,000, sales commissions, a "subjective bonus," and another bonus based on the firm's performance. W-2s submitted in the trial court indicate that defendant earned \$365,465.43 in 2000, \$384,935.07 in 2001, and \$264,037.89 in 2002. Defendant also testified that he had income in addition to his W-2 wages. Thus, the record demonstrates that defendant's income varies substantially from year to year.

The 2003 MCSF section 2.01(C) "recommends" that when a party has "considerable variation in income from year to year," as defendant, that "three years' income information" be considered. But defendant testified that the stock market peaked in 2000 and then "collapsed." Defendant gave his assessment that 2003 would not be a good year for investments and that his income would be like 2002's "or worse." He also asserted that he received a bonus in the first quarter of 2003 that he would not receive in successive quarters though he conceded that he would receive part of 2004's bonus in September 2003. On appeal, defendant concedes that his income is "tied to the stock market and the state of the economy." Thus, while use of the three years' income method is "recommended" in the MCSF, under the circumstances presented in this case, the "three years' income information," standing alone, would not provide a complete and accurate assessment of defendant's income for the purpose of setting an appropriate child support amount.

Accordingly, the trial court not only properly considered defendant's previous three year's income information, but also considered other relevant income information in determining defendant's income. Contrary to defendant's assertion on appeal, the record does not demonstrate that the trial court relied only on defendant's 2003 first-quarter income in determining defendant's income. Defendant cites to the portion of the record showing that the trial court considered *plaintiff's* income earned between January and March 2003 in determining *plaintiff's* income. Beyond this, defendant merely guesses that the trial court must have multiplied defendant's first-quarter income by four to determine defendant's income. But our review is based on the record, not defendant's conjecture. Our review of the record reveals that the trial court took into account *all* of defendant's income information, including previous several years' income, current year's income, and defendant's extensive testimony about the factors determining his income. Pursuant to MCL 552.602(n)(i), income includes: "Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers." Therefore, considering the circumstances of this case, we conclude that the trial court did not clearly err in determining defendant's income.

Defendant also asserts that his voluntary financial donations to purchase equipment, services or other benefits for the minor children should have been considered in calculating support. We disagree. "The general rule is that payments made for the benefit of children which are voluntary and not pursuant to a divorce decree may not be credited against other amounts due under the decree." *Pellar v Pellar*, 178 Mich App 29, 34; 443 NW2d 427 (1989) (citations omitted).

Defendant also contends that the trial court erred in failing to address his request for an offset for money allegedly owed by plaintiff to defendant for taxes incurred in the exercise of stock options pursuant to a property settlement provision in the judgment of divorce. The issue is unpreserved because the trial court did not address it. *Herald Co v Ann Arbor Pub Schools*, 224 Mich App 266, 278; 568 NW2d 411 (1997). Further, defendant failed to present any legal authority for his assertion that the debt could be used to offset his child support obligation, he has effectively waived this issue for appeal. "[A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Defendant finally contends that the trial court erred in granting attorney fees to plaintiff because plaintiff failed to substantiate a need and the attorney fees awarded were unreasonable. "This Court reviews the trial court's decision to award attorney fees for an abuse of discretion." *Featherston v Steinhoff*, 226 Mich App 584, 592; 575 NW2d 6 (1997). Plaintiff sought an award of attorney fees pursuant to MCR 3.206(C)(2)(a) and (b). Plaintiff argued that she expended approximately half of her yearly earnings to pursue the child support modification. She also argued that defendant's significantly greater financial resources allowed him to "overwhelm" her in this litigation. These facts, along with the extensive testimony and documentation about the parties' financial resources, was sufficient to meet the requirements of MCR 2.306(C)(2). Further, in evaluating plaintiff's request for fees, the trial court properly considered plaintiff's

attorney's professional standing and reviewed and approved a detailed bill of costs. *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002). Therefore, we conclude that the trial court did not abuse its discretion in awarding attorney fees.

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Henry William Saad  
/s/ Michael R. Smolenski